

Appel Nos.: 1120-1121/ATVAT/2012  
Date of Judgment: 28/11/2022

M/s. Calcom Electronics Ltd.,  
C-41, Defence Colony,  
New Delhi.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi  
.....Respondent

Counsel representing the Appellant : Sh. S. Sangal.  
Counsel representing the Revenue : Sh. P. Tara.

### JUDGMENT

1. This common judgment is to dispose of above captioned two appeals, one challenging assessment framed under Delhi Sales Tax Act (hereinafter referred to as DST Act) and the other framed under Central Sales Tax Act (hereinafter referred to as CST Act).

2. The two appeals pertain to assessment year 1997-98.

3. On 30/10/2001, Learned STO-Assessing Authority passed assessment order raising demand of total sum of Rs. 1,24,39,318/-, as under:

“GTO As Per Sale Summary

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: 50,69,81,015.00

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without any base, supporting documents, and as such unreliable adjustments made among sister concerns and others were despite 13 opportunities provided in this regard; that the dealer had failed to furnish explanation or to produce record the observations made by Learned Assessing Authority that the Authority dismissed both the appeals taking into consideration, Vide common order dated 07/09/2012, Learned First Appellate Special Commissioner (Z-VII).

6. Dealer-appellant challenged both the above said assessments by filing appeals before Learned First Appellate Authority-

ISS	35,19,83,774.00
TTO 10%	35,19,83,774.00
Tax Payable	3,51,98,377.00
Tax Deposited	1,40,78,966.00
Tax Due	2,11,19,411.00

5. At the same time, separate assessment for the same period i.e. assessment year 1997-98 was passed by the Assessing Authority under Central Sales Tax Act raising demand of Rs. 2,11,19,411/-, in the manner as:

4. Said assessment came to be passed under DST Act, 1975.

The dealer is directed to deposit a sum of Rs. 1,24,39,318/- as per the demand notice enclosed herewith."

Add As Per Order	8,33,54,523.00
New Net GTO	59,03,35,538.00
ISS	35,19,83,774.00
TTO 7%	20,25,433.00
TTO 6%	23,63,26,331.00
Total TTO	1,43,21,359.00
Tax Paid	18,82,041.00
Tax Due	1,24,39,318.00

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“Monthly returns prescribed, all the returns are available on record, July 97 return late and filed on 19/8/97 tax deposited in time and verified from the EDP scroll.

There is difference in May 1997 return due to omission of one bill of Rs. 5763/- in RD sale. There is difference of Rs. 61,40,885/- in Sept. 97 return and sale summary. The explanation given is rate difference. Discount, objection against bill in RD sale. He explained that there is rate difference of Rs. 52,46,825/- and credit allowed to Calcom Plastic (P) Ltd., a sister concern of the dealer and thus reducing the RD sales. Similarly, there is rate difference of Rs. 7,34,030/- allowed to Calcom Vision Ltd. another sister concern of the dealer. The dealer stated that this is due to negotiation of price and affects the export and this is for the period of April 1997 to August 1997 and has shown it as export which does not appear in return in Export Col. in Sept. which shows that no export was in the month of Sept. 1997.

There is further difference due to rejection of goods. There is another voucher of Rs. 7,59,516/- dated 30/09/97 debiting the sale A/c and crediting rebate A/c for the period April to Sept. 97. He produced the document of difference of Rs. 4,06,439.70/- against the amount of Rs. 7,59,516/- and RD sale reduced by an amount of Rs. 4,06,439/-.

Further another voucher of Rs. 9,13,530/- as rejection of Turnover, IC, IC for Calcom Plastic (P) Ltd. Dated 20/8/97. There is another Dr. Note 970813 dated 20/8/97 for Rs. 3,00,000/- for Calcom Plastic (P) Ltd. He was asked to produce the relevant record regarding rejection of goods, basis of debit and credit of various A/c and affecting i.e. decreasing the RD sales and sometimes increasing the export only through the means of such adjustment whereas in actual no export took place in Sept. 97. No satisfactory explanation, books of A/cs and relevant record in support of such difference produced.

Assessing Authority observed as under:-

10. While passing assessment order under DST Act, learned

Appeal No. 1120/12

9. Arguments heard. File perused.

8. Hence these appeals.

production of proper and complete record.

per return and decline of benefit of “C” Forms for want of and non-acceptable; the factum of rejection of the version as

There is difference in January 1998 return and sale summary and thus reducing the RD sale by Rs. 5,02,200 and increasing the tax paid sale, no record in support of this difference produced. He stated that record was not available.

In March, 1998, there is difference in RD sale, Central 4% sale due to omission of bill. He was asked to produce these bills but he showed his inability to produce the relevant record in its support. There is further mentioning of Rs. 5,02,79,653/- as stock transfer in sale summary and he stated that it is inter-unit transfer from one unit to another but no such record in respect of all these units produced nor any reconciliation filed/produced.

Further there are amount of Rs. 2,14,89,443/- as technical charges receipt. He was asked to produce its record. He filed photocopy of certificate from M/s EssEss Enterprises which reads

"It is certified that we have paid Rs. 2,14,89,443/- as commission on sale only during financial year 1997-98 to M/s Calcom Electronics Ltd. @ 10% on total sale value of television sold during the financial year. We are assessed to Income Tax with AC of Income Tax circular No. 19 (1) vide PAN-AAP or 1488 H."

He failed to provide any agreement, record in support of receipt of such heavy technical charges. No record produced. Even he could not find this amount in the Ledger with him at the time of proceedings. There is further mentioning of Duty Draw back of Rs. 6,74,200/- and produced the Ledger P/1 showing DEPB licence of Rs. 4,68,000/- and Rs. 2,13,400/-. According to this it appears that the dealer has made some exports but he stated that he has no knowledge about and could not produce any supporting record except Ledger.

There is further mentioning of Rs. 3,25,474.14 as job work receipt. He was asked to produce its record in support of it but again blank answer and no record produced. Apart from this he filed another reconciliation showing Export sale. It reads:-

ST-49 : 635713/-  
ST-35 : 42796530/-Wrongly taken export sale.  
H-forms : 3814279/-  
Total : 47246552/-

As per sale summary he has shown the above amount as Export but through above Break up he has created another sale summary of Export which is entirely different and away from returns or from the sale summary finally produced at the time of assessment. No explanation no supporting document for such break up provided. He was asked as to why correct return was not filed and also as to why it was not reflected in sale summary. He was not in a position to explain neither from record nor through explanation. He also filed a trading A/c that too remained unexplained by the officials attending the proceedings. However, he was given further opportunity.

Ld. CA appeared on 18.08.2000 and filed a written explanation stating that time allowed is inadequate to locate the record and further stated old accountant had resigned and new one will take some time to prepare replies and required time. He further explained that stock transfer have been made from one unit to another for processing the



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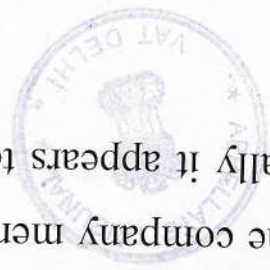
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11. So far as claim of the dealer as regards credit notes and debit notes is concerned, Learned counsel for the appellant has referred to copies of notes representing them to be credit notes, issued by the dealer to its sister concern, and available at page 64-72. He has also referred to notes, representing them to be

goods, though he has mentioned that record is being produced but no record produced regarding technical charges and duty drawn books and other as discussed above, he stated that no sale or transfer of goods is involved and it is purely against rendering of services. The B/s annexure for Fixed assets shows amount of Rs. 16,68,686/- as sale lost before which he stated that there was fine and number of assets destroyed and have been written off and no sale involved but neither there is any reflection in B/S nor any such paper like insurance, proof in support of fire and loss incurred etc. produced in its support. The above discussion reveals the unsatisfactory maintenance of record of Purchase and Sale and making adjustment among one another sister concerns without any base and solid reason supported by speaking documents in support of such amounts mentioned above. Sometimes, dealer is showing as export whereas on other time he is mentioning it as RD sale. Sometimes he is reducing RD sales which other time he is increasing the export through these mere adjustment entries. He filed 20 C forms, 1 ST-49 and no ST-35 filed in support of RD sale. Beside the dealer has filed S.Tax A/c register which also does not speak the true state of affairs. It shows heavy amount of adjustment at the end of month on A/c of discount, rebate rejection etc without any base or documents as discussed above. No record in respect of Central Sale under central Act nor shows any export in export column or sale against H forms nor he produced any record in support of ISS and therefore Central Sale 4% against which he has received C forms is disallowed and taxed @ 10% without giving any benefit for C forms in the absence of proper record and supporting documents. In view of the above discussion, it is evident that the dealer was allowed as many as 13 opportunities to produce the record and give explanation but he failed to do so. The adjustments so made among its sister concerns and others are without any base. Supporting documents and therefore, unreliable and thus unacceptable and therefore in the absence of proper record and explanation its return version is rejected and its sale is taken after adding all these adjustments which are not based on any record and the dealer is allowed the deposit of tax and verified from the scroll and total sale of 4% under Central is taken @10% in the absence of filing of proper and complete record. No benefit of C forms filed is given and total export sale is taxed @6% under Local Act as Local sale and no benefit of ST-49 is given."

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credit notes available from page 77-79, issued by the dealer-appellant to M/s Calcom Plastic (P) Ltd. and Videocon International Ltd., by way of rebate for early payment. He has also referred to documents available at page from 73 to 76 and represented them to be debit notes. The contention raised by learned counsel for the appellant is that the assessment framed by the Assessing Authority in this regard and upheld by the First Appellate Authority deserves to be set aside in view of this documentary evidence.

Learned counsel for the Revenue contended that no reliance can be placed on these documents relied by counsel for the appellant for want of credibility of the documentary evidence field by the appellant.

Learned counsel for the Revenue has pointed out that copy of document available at page 64 is only about Journal voucher perpetuate to have been issued by the appellant on 21/09/1997 and further that it cannot be termed to be a credit note. Further attention has been drawn to the interpolation made in the name of the other party in whose favour it is said to have been issued.

As rightly pointed out by learned counsel for the Revenue, this document cannot be termed as a credit note, as it is a voucher. As further rightly pointed out there is overwriting in the name of the company mentioned in the column made for particulars.

Initially it appears to have been written as Calcom Vision (P)

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Ltd. Ultimately, by way of overwriting, it has been made to read as Calcom Plastic (P) Ltd. As further rightly pointed out by learned counsel for the Revenue, as per Narration in it credit note was bearing no. 28 and was of 10.8.1997 due to rate difference for supplies for the period from April 1997 to July 1997.

Learned counsel for the Revenue has rightly submitted that credit note should have been issued on one and the same date, but in this document, as noticed above, two different dates find mention. There is also merit in the contention raised by learned counsel for the Revenue that it cannot be said to be a case of difference in rate for supplies, when the supply is stated to be from the dealer-appellant to its sister concern. Consequently, the remaining documents depicting difference in prices during the period from April 1997 to July 1997 and copies of letter dated 01/06/1997, 05/07/1997, 07/06/1997, 07/08/1997 and 12/08/1997 do not come to the aid of the dealer-appellant.

As regards copies of documents available at page 77 to 79 of the paper book, learned counsel for the Revenue has pointed out that Assessing Authority had asked the dealer-appellant to produce relevant record regarding debate and credit of various accounts and affecting RD sales and export, but no satisfactory explanation was furnished and that even books of accounts and

other relevant record were not produced to explain the difference as observed in the assessment.

As is available from the impugned assessment, 13 opportunities were afforded to the dealer-appellant to produce requisite record to explain the things but it failed to do so. There is nothing on record to suggest that the dealer-appellant had produced record pertaining to sale, purchase, ledger or cash book before the Assessing Authority. In this situation, learned Assessing Authority was justified in observing that adjustments made by the appellant amongst itself and its sister concerns and others were without any supporting documents and as such unreliable and unexplainable.

Learned counsel for the dealer-appellant has contended that books of accounts of the appellant-assessee got damaged in incident of fire and as such documents were not produced. As regards the above mentioned documents copies whereof have been made part of the paper book, the submission is that same have been collected from the sister concerns.

In case the above said records now made part of the paper book, has been collected from the sister concerns, it could be easily collected by the dealer from the sister concerns during the days the assessment were framed. There is no explanation as to why, despite 13 opportunities, dealer-appellant failed to produce the relevant record before learned Assessing



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Authority. Therefore, there is no merit in the contentions advanced by counsel for the appellant as regards this claim of the appellant.

As regards turnovers of Rs. 3.00 Lacs & Rs. 9.14 Lacs, which find mention in the assessment, case of the dealer-appellant is that these amounts represent the rejection of goods supplied vide Bill No. CAL/WZP/BSP/97-98/63 dated 03.06.1997 for 9.14 lacs to M/s Calcom Plastics P Ltd.

In this regard, reference has been made to debit notes nos. 9708/13 dated 20.08.1997 and 9708/14 dated 20.08.1997 issued by the concerned party, and available at pages 91 of the paper book. As claimed on behalf of the dealer, return of goods was within the period specified under DST Act.

Learned counsel for the Revenue has contended that in support of its claim on the ground of rejection of goods, Assessing Authority asked the dealer-assessee to produce relevant record, but it failed to produce the same despite 13 opportunities and that when it remains unexplained as to why the same was not produced before the Assessing Authority, no reliance can be placed on the record referred to above.

As already discussed above, even if, as per claim of the dealer record could not be produced because of incident of fire, firstly, the appellant could collect the same from the other party,

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including sister concern, but no such steps was taken and consequently for want of cogent and convincing evidence regarding sale/purchase, entries in the ledger and the cash book, and movement of goods, it cannot be said that claim of the dealer on this point i.e. rejection of goods was wrongly rejected/by the Assessing Authority and then by the First Appellate Authority.

13. As regards turnover of Rs. 5.02 Lacs, which finds mention in the assessment, case of the dealer-appellant is that this amount represents the amount of tax paid sale and that same is supported by specimen sale invoices as well as corresponding purchase invoices.

Further, it is case of the appellant that in the return this figure was wrongly shown in the column meant for RD sale, but when sale summary was submitted, it was corrected and shown as tax paid sale.

Learned Counsel for the appellant has referred to copies of invoices at Page No. 122 and 123 both dated 15/01/1998.

These invoices are from computerised record maintained by Calcom Vision Ltd. i.e. sister concern of the dealer-appellant. Sales tax appears to have been paid by Calcom Vision Ltd. regarding the transactions to which the invoices pertain. In view of the nature of the documents, even though earlier not

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produced before the learned Assessing Authority or before learned First Appellate Authority, can be looked into, particularly when in the course of arguments, learned Counsel for the Revenue has not challenged this evidence now produced on record by the dealer.

Accordingly, Learned Assessing Authority to take into consideration these documents at the time of fresh assessment by way of recalculation.

So far as claim of the dealer-appellant that tax paid sales of Rs. 10, 33,510/- as shown in the summary of sales filed at the time of assessment has been wrongly taxed, Learned counsel for the appellant has contended that this amount includes a sum of Rs. 5,02,800/- i.e. on which tax had already been paid, as per invoices available at page 122 & 123 of the paper book.

It is made clear that in support of the claim of the dealer as regards sales of Rs.10, 33,510/- admittedly, there is no evidence on record or available with the dealer.

It may be mentioned that in the course of arguments, learned counsel for the Revenue has no objection to documents available at page 122 & 123 of the paper book being taken into consideration, so far as claim of the dealer is that tax already stood paid as per this invoice.

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Accordingly, the matter needs recalculations taking into consideration the contents of invoices at page 122 & 123. In case, the above mentioned amount of Rs.10,33,510/-included the amount of tax already paid as per invoices available at page 122 & 123 of the paper book, Learned Assessing Authority to look into the matter and do the needful so that there is no double taxation.

14.

As regards turnover of Rs. 5,02,79,653 Lacs, which finds mention in the assessment, case of the dealer-appellant is that this amount represents stock transfer to appellant's own branch in Delhi. The Head Office and Branch Office maintain separate books of accounts and this stock transfer duly reflected in both books of accounts. As claimed by the appellant, the goods were utilized as raw material for the manufacture of taxable goods for sale by the other division of appellant.

Further, these sales are stated to have been reflected in the books of accounts and due tax stands already paid.

As already noticed above, despite 13 opportunities provided to the dealer-appellant, it failed to produce record in support of this claim.

Learned Counsel for the Revenue has no objection to the allowing of this claim of the dealer in view of the record now made available from Page Nos. 93 to 99.

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Accordingly, Learned Assessing Authority to make fresh assessment while allowing claim of the dealer on this point of local stock transfer.

15.

As regards turnover of Rs. 214.89 Lacs, which finds mention in the assessment, case of the dealer-appellant is that this amount represents technical and marketing support charges received from M/s Ess Ess Entreprises under the terms of MOU dated 01.04.1994 and modifications vide letter dated 04.04.1996 and also the modifications for the year 1997-1998.

Case of the dealer further is that this amount has been reflected in the audited books of accounts under the head 'Commission of Sales' and M/s Ess Ess Entreprises has issued a certificate in this regard.

Learned Counsel for the appellant has referred to copies of documents available from Page Nos. 100-108 of the paper book, in support of its contention that the said amount was towards commission for technical and marketing support.

Learned Counsel for the Revenue has rightly contended that in view of the contents of the certificate from M/s Ess Ess Enterprises regarding payment of commission on sale by the said concern to the dealer-assessee on sale value of television set, dealer-appellant may be allowed relief as regard its claim in this regard.

Keeping in view the certificate issued by third party, and same being not a self serving document, dealer-appellant is entitled to the relief as regards its claim in this regard i.e. technical charges/commission. *da. Addressing Authority. It do the needful*

16. As regards turnover of Rs. 6.74 Lacs, which finds mention in the assessment, case of the dealer-appellant is that this amount represents DEPB licenses for Rs. 4.61 lacs and Rs. 2.13 lacs. That DEPB licenses no. 88862 & 90211 are stated to have been used for import of goods by the appellant. So it is case of the dealer that this amount was not exigible to tax.

Learned Counsel for the dealer-appellant has submitted that during the relevant period, DEPB were not covered by the definition of "goods" as available u/s 2(g) of DST Act.

Learned Counsel has also referred to list of bills of entries in proof of the fact of consumption by the dealer-appellant against the DEPB licenses. The contention is that in view of the consumption by the dealer-appellant against DEPB licence, the impugned assessment upheld by Learned First Appellate Authority deserves to be set aside.

Learned Counsel for the Revenue has submitted that in view of documents available at Page Nos. 109 and 113 submitted with the paper book, it is not being in dispute that this is a case of consumption by the dealer as regards DEPB licences.



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In view of the above said submission of Learned Counsel for the Revenue, it can safely be said that the dealer-appellant was entitled to incentive on DEPB licences on the basis of the above said documents.

Accordingly, Learned Assessing Authority to make recalculations regarding this claim of the dealer.

17.

As regards turnover of Rs. 3.25 Lacs, which finds mention in the assessment, case of the dealer-appellant is that this amount represents the Job-Work-Charges on account of assembly work done and is supported by challan/invoices and further that entries in the audited books of accounts.

When learned Counsel for the Revenue has pointed out that no evidence was produced in support of this claim before the Revenue Authorities and no such evidence has been even before this Appellate Tribunal, no fault can be found with the assessment framed in this regard.

In the course of arguments, learned counsel for the appellant has candidly admitted that there is no evidence available in support of its claim on the said point.

Consequently, it is held that assessment has been correctly framed by learned Assessing Authority as regards this claim of the dealer-assessee.

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18.

As regards turnover of Rs. 16.69 Lacs, which finds mention in the assessment, case of the dealer-appellant is that this amount represents the assets destroyed in fire and also value of some sold assets.

Assessing Authority rejected this claim of the dealer observing that no paper like insurance, proof in support of fire and loss was produced before him, despite 13 opportunities granted to the dealer.

In support of this claim, learned Counsel for the appellant has referred to copies of documents available from Page Nos. 114 to 121, which relate to claim of insurance allowed to the dealer-appellant due to incident of fire at its factory on 08/10/1997.

In the course of arguments, learned Counsel for the appellant has not made any submission as to from where these documents have been collected for being produced before this Appellate Tribunal.

However, keeping in view the nature of one document available at Page No. 114 to 121, purported to have been issued by National Insurance Company Ltd. same can be taken into consideration by the Revenue Authorities for proper assessment and fresh assessment. It is ordered accordingly as regards claim of the dealer in this regard.



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19. As regards turnover of Rs. 1180.48 Lacs, which finds mention in the assessment, case of the dealer-appellant is that these are the sales against ST-35 forms for which forms could not be filed, as none of the forms was received before framing of the assessment. As further pleaded, ST-35 forms have been subsequently received.

As regards turnover of Rs. 38.14 Lacs, which finds mention in the assessment, case of the dealer-appellant is that these are the sales against Forms 'H' which also could not be presented before the framing of the assessment same having not been received from the concerned dealer, and that now the dealer is in their possession.

As regards turnover of Rs. 6.36 Lacs, which finds mention in the assessment, case of the dealer-appellant is that these are the sales against Form ST-49 which were submitted at the time of assessment but illegally rejected by Assessing Authority.

Further, it is case of the dealer that all the relevant documents in proof of export of goods were before the Learned Assessing Authority, but he rejected the same from consideration.

Learned counsel for the appellant has referred to copies of ST-35 Forms, with their list available from Page Nos. 19-57; copies of ST-49, with their list available from Page No. 58-59; copies of "H" Forms, with their list available from Page Nos.

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60-63 and submitted that same be taken into consideration for grant of relief to the dealer on their basis.

20. As already noticed above, learned Assessing Authority rejected claim of the dealer on the basis of ST-49, ST-35 and H Forms while observing as under:

“As per sale summary he has shown the above amount as Export but through above Break up he has created another sale summary of Export which is entirely different and away from returns or from the sale summary finally produced at the time of assessment. No explanation no supporting document for such break up provided. He was asked as to why correct return was not filed and also as to why it was not reflected in sale summary. He was not in a position to explain neither from record nor through explanation. He also filed a trading A/c that too remained unexplained by the officials attending the proceedings. However, he was given further opportunity. Ld. CA appeared on 18.08.2000 and filed a written explanation stating that time allowed is inadequate to locate the record and further stated old accountant had resigned and new one will take some time to prepare replies and required time. He further explained that stock transfer have been made from one unit to another for processing the goods, though he has mentioned that record is being produced but no record produced regarding technical charges and duty drawn books and other as discussed above, he stated that no sale or transfer of goods is involved and it is purely against rendering of services.”

21. On the other hand, Learned counsel for the Revenue has rightly contended that as per entries in the return, claim of the dealer-appellant was that goods were exported, but the dealer did not furnish any document regarding export, and rather before the Assessing Authority he furnished ST 35 forms, which were not in support of claim of export. In the given situation, dealer-appellant was required to furnish revised return putting forth its claim on the basis of ST 35 forms, but it never revised the

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return. Therefore, no fault can be found with the assessment framed by the learned Assessing Authority in rejecting ST 35 forms from consideration.

As regards ST 49 forms, Learned counsel for the Revenue has rightly contended that as per entries in the return, claim of the dealer-appellant was that goods were sold to some exporter by way of RD sale, for export, but the dealer did not furnish any document in this regard , and rather before the Assessing Authority he furnished ST 49 forms, which were not in support of its claim initially put forth.

In the given situation, dealer-appellant was required to furnish revised return putting forth its claim on the basis of ST 49 forms, but it never revised the return. Therefore, no fault can be found with the assessment framed by the learned Assessing Authority in rejecting ST 49 forms from consideration.

As regards H forms, Learned counsel for the Revenue has rightly contended that as claim of the dealer-appellant, as per return, goods were sold to some exporter outside Delhi, for export, but the dealer did not furnish any document in this regard, and rather before the Assessing Authority he furnished H forms, which were not in support of its claim initially put forth.

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In the given situation, dealer-appellant was required to furnish revised return putting forth its claim on the basis of 'H' forms, but it never revised the return. Therefore, no fault can be found with the assessment framed by the learned Assessing Authority in rejecting 'H' forms from consideration.

22. As regards ambiguity in the assessment order to the tune of Rs. 36,590/- learned counsel for the appellant has pointed out in the course of arguments, suffice it to say that once fresh assessment is made taking into consideration the above findings, learned Assessing Authority would also see that there is no ambiguity regarding any amount. It is ordered accordingly.

23. No other argument has been advanced by learned Counsel for the appellant in this appeal pertaining to assessment under OST Act.

### Appeal No. 1121/12

24. As regards Appeal No. 1121/12 i.e. challenging the assessment for the assessment year 1997-98, under CST Act, it has been contended that Learned Assessing Authority levied tax on the inter-state sale @ 10% instead of concessional rate of 4% even though 20 'C' Forms of the value of Rs. 2.27 crores were submitted.

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Learned Counsel for the appellant has submitted that while furnishing paper book dated 08/01/2016, dealer has produced copies of 43 'C' Forms, subsequently received by the dealer

as regards statutory forms and inter-State sales. Assessing Authority wrongly rejected claim of dealer-appellant Learned Counsel for the appellant has contended that the

27.

“The above discussion reveals the unsatisfactory maintenance of record of Purchase and Sale and making adjustment among one another sister concerns without any base and solid reason supported by speaking documents in support of such amounts mentioned above. Sometimes, dealer is showing as export whereas on other time he is mentioning it as RD sale. Sometimes he is reducing RD sales which other time he is increasing the export through these mere adjustment entries. He filed 20 C forms, 1 ST-49 and no ST-35 filed in support of RD sale. Beside the dealer has filed S.Tax A/c register which also does not speak the true state of affairs. It shows heavy amount of adjustment at the end of month on A/c of discount, rebate rejection etc without any base or documents as discussed above. No record in respect of Central Sale under central Act nor shows any export in export column or sale against H forms nor he produced any record in support of ISS and therefore Central Sale 4% against which he has received C forms is disallowed and taxed @ 10% without giving any benefit for C forms in the absence of proper record and supporting documents.”

Sale observed as under:

26. As finds mention in the assessment pertaining to DST Act, learned Assessing Authority, while dealing with the Central

41,879/-, which too are being collected. Forms in proof of inter-state sales, except of the value of Rs. furnished, but the appellant is now in possession of all the 'C' rejected on the ground that no evidence in proof thereof was Case of the dealer-appellant is that inter-state sales were

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and that same be taken into consideration for grant of appropriate relief to the dealer-appellant.

On the other hand, Learned Counsel for the Revenue has contended that as regards rejection of 20 "C" Forms produced before Assessing Authority, no interference is called for, particularly when the dealer failed to produce any document in support of claim of inter-State sales and also fail to comply with the conditions of Section 3(a) of CST Act.

28. As regards copies of 43 "C" Forms produced before this Appellate Tribunal for the first time by the dealer, even though learned Counsel for the appellant has submitted that these have been received subsequently i.e. after the incident of fire, learned Counsel for the Revenue has submitted that for want of any proof of inter-State sales or movement of goods, the dealer-appellant is not entitled to any relief in this regard.

29. As required u/s 3 of CST Act, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

a) occasions the movement of goods from one State to another; or

b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

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Keeping in view the submission put forth on behalf of the dealer that these statutory forms have been received subsequently, and in view of decision in *M/s Kirloskar Electric Co. Ltd. vs. Commissioner of Sales Tax, 1991 Vol. 83 of Sales Tax Cases, 485*, decided by Hon'ble High Court of Delhi, the matter needs to be remanded to Learned Assessing Authority for assessment taking into consideration the said statutory forms.

31.

Accordingly, these appeals No. 1120-21 of 2012 are disposed of so as to allow another opportunity to the appellant to present before the Assessing Authority, statutory forms, copies whereof have been filed before this Appellate Tribunal. The Assessing Authority shall subject these 43 statutory forms to verification (including ruling out of any possibility of duplicacy) and also consider, sufficient cause, if any, for non filing of the said Forms, filed before this Appellate Tribunal, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with law. Assessing Authority to provide reasonable opportunity of being heard to the appellant.

32.

Appellant is hereby directed to appear before the Assessing Authority on 05/12/2022.

33. No other argument has been advanced by learned Counsel for the appellant in this appeal pertaining to assessment under CST Act.

34. In view of the above findings, both the appeals No.1120 and 1121 of 2012 are disposed of accordingly.

35. File be consigned to the record room. One copy of the judgment be placed in the connected Appeal No. 1121 of 2012. Copy of the judgment be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.  
Date: 28/11/2022.



*Narinder Kumar*  
28/11/2022  
(Narinder Kumar)  
Member (Judicial)